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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 ANGEL MIGUEL SANTIAGO-RIVERA,  
15 Defendant.

CASE NO. 2:21-CR-179-TLN  
STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER  
DATE: May 12, 2022  
TIME: 9:30 a.m.  
COURT: Hon. Troy L. Nunley

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17 By previous order, this matter was set for status on May 12, 2022. By this stipulation, the parties  
request that the Court continue the status conference to June 16, 2022, and to exclude time under the  
Court's General Orders, as well as under Local Code T4, for the reasons set forth below.

20 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the  
21 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to  
22 continue all criminal matters to a date after June 1. This and previous General Orders were entered to  
23 address public health concerns related to COVID-19.

24 Although the General Orders address the district-wide health concern, the Supreme Court has  
25 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
26 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
*Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
27 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
28

1 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 2 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 3 or in writing”).

4 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 5 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 6 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 7 the ends of justice served by taking such action outweigh the best interest of the public and the  
 8 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 9 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 10 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 11 the defendant in a speedy trial.” *Id.*

12 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 13 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 14 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 15 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 16 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 17 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 18 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 19 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 20 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

21 In light of the societal context created by the foregoing, this Court should consider the following  
 22 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 23 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date  
 24 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
 25 pretrial continuance must be “specifically limited in time”).

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28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

## **STIPULATION**

1. By this stipulation, the defendants now move to continue the status conference in this matter to June 16, 2022, at 9:30 a.m., and to exclude time between the date of the Court's order, below, and June 16, 2022, under Local Code T4 and this Court's General Orders.

2. The parties agree and stipulate, and request that the Court find the following:

a) The discovery associated in this case includes investigative reports, photographs, physical narcotics evidence, and firearms evidence. This discovery has been produced directly to counsel and the government will make available for inspection and copying any other discovery that the defense wishes to review.

b) Counsel for defendant desires additional time to review the charges and discovery, conduct investigation, and consult with her client regarding potential defenses in this matter.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period between the date of this Court's order, below, and June 16, 2022, inclusive, is deemed excludable pursuant to the Court's General Orders, in the interest of public health and safety, and pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial

1 must commence.

2 IT IS SO STIPULATED.

3 Dated: May 10, 2022

PHILLIP A. TALBERT  
United States Attorney

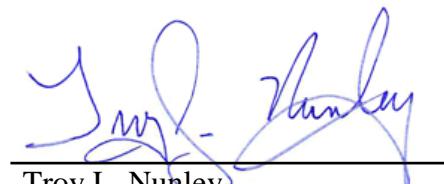
4 /s/ JAMES R. CONOLLY  
5 JAMES R. CONOLLY  
6 Assistant United States Attorney

7 Dated: May 10, 2022

8 /s/ NOA OREN  
9 NOA OREN  
10 Assistant Federal Defender  
11 Counsel for Defendant  
12 ANGEL MIGUEL SANTIAGO-RIVERA

13 **ORDER**

14 IT IS SO FOUND AND ORDERED this 10<sup>th</sup> day of May, 2022.

15   
16 Troy L. Nunley  
17 United States District Judge